



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/920,173	08/01/2001	James K. Lacy	31660	5297

7590 10/07/2002

THOMAS B. LUEBBERING  
HOVEY, WILLIAMS, TIMMONS & COLLINS  
Suite 400  
2405 Grand  
Kansas City, MO 64108

EXAMINER

ARYANPOUR, MITRA

ART UNIT	PAPER NUMBER
----------	--------------

3711

DATE MAILED: 10/07/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

S.M.

# Office Action Summary

Application No.

09/920,173

Applicant(s)

LACY, JAMES K.

Examiner

Mitra Aryanpour

Art Unit

3711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 01 August 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 August 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to because erasures, alterations, overwriting, interlineations, folds, copy machine marks not accepted. Figures 2 and 4 [see 37 CFR 1.84(e); solid black areas pale. Figures 13-15]; and solid black shading not permitted. Figures 1, 2, 3, 4, 6, 9-12 [see 37 CFR 1.84 (m)]. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: *closed bottle 25 (on page 6); upper leg 50 (on page 6); game 10 (on page 8); game 20 (on page 9)*. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description: *48 (see figure 2); 55 (see figure 6); 97 (see figure 11); 229, 259 and 261 (see figure 14)*. A proposed drawing correction, corrected drawings, or amendment to the specification to add the reference sign(s) in the description, are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### *Claim Rejections - 35 USC § 112*

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

Art Unit: 3711

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 1-41 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, lines 3 and 5, recites the limitation "a ball" and "with a bottle". These limitations have not been positively recited. It is unclear if a scoring structure is being claimed alone or in combination with a ball and a bottle. *claiming only scoring structure*

Claim 23, lines 3 and 5, recites the limitation "with a bottle". This limitation has not been positively recited. It is unclear if a scoring structure is being claimed alone or in combination with a bottle and a ball. *no not claimed therefore no antecedent basis*

Claim 32, lines 3 and 5, recite the limitation "with a bottle". This limitation has not been positively recited. It is unclear if a scoring structure is being claimed alone or in combination with a bottle and a ball.

6. Claims 2-4 recite the limitation "an open bottle"; "a closed bottle"; and "the bottle" in lines 1 respectively. There is insufficient antecedent basis for this limitation in the claim.

7. Claims 24-26 recite the limitation "an open bottle"; "a closed bottle"; and "the bottle" in lines 1 respectively. There is insufficient antecedent basis for this limitation in the claim.

8. Claims 33-35 recites the limitation "an open bottle"; "a closed bottle"; and "the bottle" in line respectively. There is insufficient antecedent basis for this limitation in the claim.

9. Claim 15 recites the limitation "the ball" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Art Unit: 3711

10. Claim 41 recites the limitation "the two rods" in line 1. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Ruderman (2,736,558).

Ruderman discloses a game that substantially mimics an aspect of a sport, the game comprising: a scoring structure (57) operable to accommodate a ball in a manner substantially mimicking a scoring aspect of the sport; and a mechanism for removably coupling (20) the scoring structure (57) with a bottle (21-25) to thereby position the scoring structure for playing.

*IN ADDITION:*

***Claim Rejections - 35 USC § 103***

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3711

14. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Candor et al (3,854,879) in view of Zerpa (2,535,474).

Candor et al shows a game that substantially mimics an aspect of a sport, the game comprising: a scoring structure (22) operable to accommodate a ball (B) in a manner substantially mimicking a scoring aspect of the sport; and a mechanism (24) for removably coupling the scoring structure (22) with a bottle (21) to thereby position the scoring structure for playing. Candor et al as described above shows the support structure can be a plastic jug or a milk-type container. Zerpa shows a chance device having a hollow base (1), a simulation of a bottle (2), and a series of disc-like members (8) slidably positioned on a rod (6). Zerpa shows the support structure to be a bottle. Therefore, in view of the above references it would have been obvious to one having ordinary skill in the art at the time the invention was made to have utilized different types of containers/bottles as support stands order to mimic different aspects of a game.

Regarding claim 2, Candor et al shows using any type of commercial or home use products such as milk, fruit juice, water, detergents bottles, etc. made of elastomeric material such as plastic, or any other suitable material as long as it is non-breakable (see column 4, lines 4-14). However, traditionally “jugs”, are containers that are made of glass, or metal having a small mouth, a handle, and usually a stopper or cap. It would have been obvious to use a glass container or jug if the material was readily available at the time of the invention.

Regarding claim 3, Candor et al shows the jug or container to be plastic.

Regarding claim 4, Candor et al shows the bottle is weighted with a weighted material to aid stability (see column 5, lines 40-50).

Art Unit: 3711

15. Claims 5-11, 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Candor et al (3,854,879) and Zerpa (2,535,474) in view of Williams (2,889,149).

Regarding claim 5, Candor et al as described above shows the game to substantially mimic baseball. Candor et al does not show the game device to be basketball, therefore there is no need for a shot ramp. However, Williams shows a miniature basketball game having a support stand (11), a basket (16), a backboard (17) and a deflector or shot ramp (18) operable in cooperation with a force applied to the ball, to launch the ball upward and toward the scoring structure (which is the basket 16). It would have been obvious and to have utilized the support structure of Candor et al, so that the support structure (21) can be used for a variety of sports, including the basketball game shown by Williams.

Regarding claim 6, Candor et al's game device is used in conjunction with a backstop having a net in order to limit the ball travel. This is a common feature in a baseball type setting.

Regarding claim 7, Candor et al as described above shows the support structure to be used for a baseball setting. Williams as described above shows a miniature basketball-type game, that has a backboard (17), a basket with a net (16), and a support stand (11) attached to a base (12). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have utilized the support structure of Candor et al for sports other than baseball, so that the game device is more cost effective and the base support, more stable.

Regarding claims 8-11, Candor et al as modified above does not expressly disclose the use of cardboard drink coasters, or retaining clips. However, Candor et al does suggest the use of suitable material such as cardboard, rubber or other elastomeric materials such as thin walled plastic materials (see column 5, lines 23-27). Candor et al teaches the use of conventional

Art Unit: 3711

mechanical expedients based on routine design considerations in order to reduce cost of manufacturing.

Regarding claim 15, Candor et al as modified above does not expressly indicate if the ball is a ping pong ball. Ping pong balls are well known and it would have been obvious to use it for the modified game device of Candor et al, since it is resilient, small and readily available.

16. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Candor et al (3,854,879) and Zerpa (2,535,474) and Williams (2,889,149), as applied to claim 7, and further in view of Hodges (4,025,074).

Regarding claim 12, Candor et al as modified in view of Williams does not show a circular shot ring operable to define an area wherein the ball must appear prior to entering the basket. Hodges shows a mini-dome basketball game having a basket (88), a backboard 57, and a circular shot ring (39) positioned on the floor area. It would have been obvious in view of Hodges to further include a circular marking for the modified game device of Candor et al, in order to create a more realistic game setting.

17. Claims 13, 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Candor et al (3,854,879) and Zerpa (2,535,474) and Williams (2,889,149), as applied to claim 7, and further in view of Collins (4,202,543).

Regarding claim 13, Candor et al as modified in view of Williams, does not include a shot blocking device. Collins shows a recreational basketball game and facility having a support stand (40), a basket (90), a backboard (91) and a shot blocking device, wherein the shot blocking

Art Unit: 3711

device comprises a handle (87) coupled with a paddle (86) and operable to block the ball from entering the basket (column 4, lines 59-68). It would have been obvious to also include a blocking arm for the modified device of Candor et al, in order to make the game device more challenging.

Regarding claim 14, Candor et al as modified in view of Williams, does not show the use of drinking straw, but teaches the use of rubber or other elastomeric materials such as thin walled plastic materials (see column 5, lines 23-27). A straw is considered to be a "thin walled plastic material".

18. Claims 16, 17, 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Candor et al (3,854,879) and Zerpa (2,535,474) as applied to claim 1, and further in view of Kemp (6,070,879).

Regarding claim 16, Candor et al as disclosed above shows the support structure to be used for a baseball setting. Kemp shows a tabletop football goal and net having a goal post (16), left and right uprights (32, 30) and a crossbar (20). It would have been obvious in view of Kemp to one having ordinary skill in the art at the time the invention was made to have utilized the support structure of Candor et al for sports other than baseball, so that the game device is more cost effective and also to have a more stable base support.

Regarding claim 17, Candor et al as modified above does show the use of drinking straw for the uprights, but teaches the use of rubber or other elastomeric materials such as thin walled plastic materials (see column 5, lines 23-27). A straw is considered to be a "thin walled plastic material".

Regarding claim 19, Candor et al as modified in view of Kemp does not expressly disclose the use of cardboard drink coasters, or retaining clips. However, Candor et al does suggest the use of suitable material such as cardboard, rubber or other elastomeric materials such as thin walled plastic materials (see column 5, lines 23-27). Candor et al teaches the use of conventional mechanical expedients based on routine design considerations in order to reduce cost of manufacturing.

19. Claims 18, 20, 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Candor et al (3,854,879), Zerpa (2,535,474) and Kemp (6,070,879) as applied to claim 16, and further in view of Nieland (3,675,922).

Regarding claim 18, Candor et al as modified in view of Kemp does not show the spacing between the uprights to be variable. Nieland shows a portable goalpost having a variable post (40), left and right uprights (21) and an extendable crossbar (10). It would have been obvious in view of Nieland to have provided a goal assembly that is readily assembled, and which took up minimum space when disassembled for the modified assembly of Candor et al.

Regarding claims 20 and 21, Candor et al as modified in view of Kemp further show a kicking tee (60) positioned on the playing surface and operable to support a ball (100') in a playing position (see column 3, lines 55-71).

20. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Candor et al (3,854,879), Zerpa (2,535,474) and Kemp (6,070,879) as applied to claim 16, and further in view of Klaus (1,661,292).

Art Unit: 3711

Regarding claim 22, Candor et al as modified in view of Kemp show the game further including a kicking device operable to transfer a force to the ball (upon placing the ball on the tee the player manually transfers force on the ball in order to make a shot). Nonetheless, for the sake of argument Klaus shows a toy ball-shot device having a vertical support (12), a scoring structure (13) and a ball ejector (15). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided a ball ejector such as the one described by Klaus for the modified game device of Candor et al so that the game becomes more challenging.

21. Claims 23-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Candor et al (3,854,879), Zerpa (2,535,474) in view of Williams (2,889,149), Hodges (4,025,074) and Collins (4,202,543).

Regarding claim 23, see comments for claims 1, 7, 9, 10, 12 and 13.

Regarding claim 24, see comments for claim 2.

Regarding claim 25, see comments for claim 3.

Regarding claim 26, see comments for claim 4.

Regarding claim 27, see comments for claim 8.

Regarding claim 28, see comments for claim 11.

Regarding claim 29, see comments for claim 14.

Regarding claim 30, see comments for claim 15.

Regarding claim 31, see comments for claim 5.

Art Unit: 3711

22. Claims 32-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Candor et al (3,854,879), Zerpa (2,535,474) in view of Kemp (6,070,879), Nieland (3,675,922), and Klaus (1,661,292).

Regarding claim 32, see comments for claims 1, 16, 20 and 22.

Regarding claim 33, see comments for claim 2.

Regarding claim 34, see comments for claim 3.

Regarding claim 35, see comments for claim 4.

Regarding claim 36, see comments for claim 21.

Regarding claim 37, see comments for claim 17.

Regarding claim 38, see comments for claim 18.

Regarding claim 39, see comments for claim 19.

23. Claims 40 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Candor et al (3,854,879), Zerpa (2,535,474), Kemp (6,070,879), Nieland (3,675,922), and Klaus (1,661,292), as applied to claim 32, and further in view of Franklin et al (D321,736).

Candor et al as modified in view of Kemp does not show a backstop having a net, and it also does not show the use of two bottles as support structures for the uprights. Franklin et al shows a tabletop football goal and net, wherein the net acts as a backstop. It would have been obvious in view of Franklin et al to have provided a net for the modified structure of Candor et al in order to prevent the balls from traveling substantially beyond the goal area.

Regarding claim 41, Candor et al as modified in view of Kemp only show one bottle used for supporting the left and right uprights. It would have been obvious to one having ordinary skill

Art Unit: 3711

in the art at the time the invention was made to have provided separate support structures for the modified device of Candor et al, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. St Regis paper Co. v. Bemis Co., 193 USPQ 8 (7<sup>th</sup> Cir. 1977).

### ***Conclusion***

24. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Glass et al; Martin, Jr.; Morelli; Johnston; Fox; Brooks; Zheng; Taub; Savage; Cooter; Tatter; Jenney; Polite; Smith et al; Miller; Hicks et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mitra Aryanpour whose telephone number is 703 308 3550. The examiner can normally be reached on Monday - Friday 9:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Sewell can be reached on 703 308 2126. The fax phone numbers for the organization where this application or proceeding is assigned are 703 308 7768 for regular communications and 703 305 3579 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308 1148.

MA  
September 30, 2002

Application/Control Number: 09/920,173  
Art Unit: 3711

Page 13



Paul E. Carroll  
Supervisor, Patent Examiner  
Group 9760